

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-14848-2019 (O&M)
Date of Decision:-15.5.2019

Naranjan Singh

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Gopal Singh Nahel, Advocate for the petitioner.

GURVINDER SINGH GILL, J.(Oral)

The petitioner has approached this Court challenging order dated 16.11.2018 passed by learned Sub-Divisional Judicial Magistrate, Moonak, whereby an application filed by him for recalling PW-2 Kirpal Singh for his further cross-examination, has been dismissed.

Notice of motion to State of Punjab.

On asking of the Court, Ms. Rashmi Attri, Assistant Advocate General, Punjab, who is present in Court, accepts notice on behalf of the respondent-State. A copy of the petition has been furnished to the learned State counsel today in Court.

The learned counsel for the petitioner has submitted that the FIR in question was lodged at the instance of Kirpal Singh and that in the final report under Section 173 Cr.P.C. (Annexure P-2) although as many as 18 witnesses were mentioned in the list of witnesses but Kulwinder Singh

was nowhere mentioned in the list of witnesses, but later on upon an application filed by the prosecution, the said Kulwinder Singh was summoned and was examined as a witness. The learned counsel has submitted that infact when the statement of PW-2 Kirpal Singh was recorded, at that time the accused did not know as to whether there is any other eye-witness and since PW-4 Kulwinder Singh has been later on introduced as a witness, the accused need to put some material questions to PW-2 Kirpal Singh regarding the presence of PW-4 Kulwinder Singh as well as his role.

The learned State counsel has, however, opposed the petition while submitting that the application has been filed simply to delay the conclusion of trial and that since the petitioner has duly cross-examined PW-2 Kirpal Singh as well as PW-4 Kulwinder Singh, no ground for further cross-examination of PW-2 Kirpal Singh is made out.

I have considered rival submissions addressed before this Court.

There can possibly be no dispute that an accused is required to be afforded proper opportunity to defend himself. An accused cannot be taken by surprise by the prosecution and in case any such situation arises, the minimum that a Court can do is to ensure that accused doesn't feel prejudiced on account of such unforeseen event. PW-4 Kulwinder Singh has been examined in the capacity of an eye-witness, but when PW-2 Kirpal Singh was examined, it was not known to the accused that PW-4 Kulwinder Singh is also to be examined since the name of Kulwinder Singh did not figure in the list of witnesses. In these circumstances, it can be said that the

accused may be prejudiced to some extent, in case the accused are not permitted to put relevant questions to the complainant PW-2 Kirpal Singh as regards the presence and role of PW-4 Kulwinder Singh. As such, the petitioner deserves to be afforded an opportunity to recall PW-2 Kirpal Singh. The impugned order dated 16.11.2018 passed by learned Sub-Divisional Judicial Magistrate, Moonak cannot sustain and is hereby set aside. PW-2 Kirpal Singh is ordered to be recalled for the purpose of further cross-examination by the accused to the limited extent of putting questions only as regards the presence and role of PW-4 Kulwinder Singh.

The petition stands accepted to the limited extent as indicated above.

15.5.2019

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether reasoned/speaking

Yes / No

Whether reportable

Yes / No